

Remarks:

Reconsideration of the application is requested.

Claims 1-16 and 19-35 remain in the application. Claims 16 and 19-28 have been amended. Claims 30-35 have been added. Claims 1-15 have been withdrawn from consideration at this time.

In deference to the requirement in the section entitled "Election/Restriction" on pages 2-3 of the above-identified Office action, Applicants confirm the election of the product claims for consideration at this time.

In the section entitled "Drawings" on page 3 of the above-identified Office action, the drawings have been objected to under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims.

More specifically, the Examiner has stated that the plurality of ratchets in claim 16 must be shown or the feature cancelled from the claim.

The ratchet (34) is only shown in Fig. 1 as an example. A person skilled in the art after reading the specification would understand that a ratchet is provided for each wire (40)

in order to create tension in the wire. However, Fig. 1 has been amended to clearly show a plurality of ratchets.

In the section entitled "Claim Rejections - 35 USC § 112" on page 3 of the above-identified Office action, claim 27 has been rejected as being indefinite under 35 U.S.C. § 112 second paragraph.

More specifically, the Examiner has stated that it is unclear what terminology "pre-constructed non-structural" means.

According to the plain meaning of this term, it means something that is already constructed before constructing the fence and has no structural function for the fence. For example, a pre-constructed non-structural decoration column is only used for decoration.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, second paragraph. Should the Examiner find any further objectionable items, counsel would appreciate a telephone call during which the matter may be resolved.

In the section entitled "Claim Rejections - 35 USC § 103" on pages 3-7 of the above-mentioned Office action, claims 16-29 have been rejected as being unpatentable over Waggoner et al.

(US pat. No. 6,355,333) in view of Spillinger ((US Pat. No. 485,304) under 35 U.S.C. § 103(a).

The rejection has been noted and claims 16 and 28 have been amended in an effort to even more clearly define the invention of the instant application. Support for the changes is found on page 14, lines 10-14 and page 15, lines 14-16 of the specification.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 16 calls for, inter alia:

a ratcheting system including at least two temporary ratcheting posts, at least one of said ratcheting posts having a plurality of fastening locations;

a plurality of high-tension tensile wires running between said temporary ratcheting posts and secured to said plurality of fence posts, at least one end of each of said high-tension tensile wires being connected to a respective one of said ratchets, said high-tension tensile wires being tensioned to a pre-determined tension by actuating said ratchets;

a wire lath secured to said plurality of high-tension tensile wires and said fence posts; and

said high-tension tensile wires being cut between said end fence posts and said ratcheting posts compressing said wire lath. (Emphasis added by Applicants).

Claim 16 recites an intermediate product in which the wires have been cut, but the ratcheting posts are still in place.

Claim 28 calls for, inter alia:

a plurality of high-tension tensile wires secured to said plurality of fence posts, said high-tension tensile wires being tensioned to a pre-determined tension and having free ends;

a wire lath secured to said plurality of high-tension tensile wires and said fence posts and being compressed by said high-tension tensile wires. (Emphasis added by Applicants).

As stated by the Examiner on page 4 of the Office action, Waggoner et al. do not disclose a ratcheting system including ratcheting posts or ratchets. Fig. 1 of Spillinger shows posts A, B, C. However, these posts are not "temporary", as recited in claim 16 of the instant application. The posts A, B, C in Spillinger form a part of the fence and will not be removed after finishing the fence construction.

According to the invention of the instant application, the high-tension tensile wires (40) are cut outside the end fence posts to create a post-tension condition in the fence (see page 15, lines 14-16 of the specification of the instant application). This feature is not disclosed in either Waggoner et al. or Spillinger. In Waggoner et al., there is not any tension in the wires 14. In Spillinger, the wires can be tensioned but are not cut after the construction of the fence. A post-tension condition can therefore not be created.

The advantage of a post-tension condition in the fence is that the fence will be compressed and strengthened.

Furthermore, in Waggoner et al., the lath 18 is not secured to the wires 14, but rather to a barrier sheet 16 (see Fig. 1 and column 2, lines 53-54). The barrier sheet 16 cannot be dispensed with because of its purpose to prevent water from entering the wall. In contrast, according to the invention of the instant application, the wire lath (60) is directly secured to the high-tension tensile wires (40) and the fence posts (20).

In addition, the fence according to the invention of the instant application is a suspension fence, which means the bottom of the wall structure of the fence need not be secured to the ground. See new claims 31 and 33. In contrast, in Waggoner et al., the bottom of the wall is secured to the ground whereas in Spillinger there is not any wall structure except the wires.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 16 and 28. Claims 16 and 28 are, therefore, believed to be patentable over the art and since all of the dependent claims are ultimately dependent

on claim 16 or claim 28, they are believed to be patentable as well.

Claims 30-35 have been added. Since claims 16 and 28 are believed to be patentable as discussed above and claims 30-34 are dependent on claims 16 or 28, they are believed to be patentable as well.

Claim 35 is similar to claim 16. However, according to claim 35, the ratcheting posts are part of the final product. As discussed above, the important feature of the instant application is that the high-tension tensile wires are cut after being tensioned to a certain tension and the wire lath or both wire lath and the fence coating are compressed as a result thereof. This feature is not disclosed anywhere in the cited prior art documents. Claim 35 is, therefore, believed to be patentable over the art.

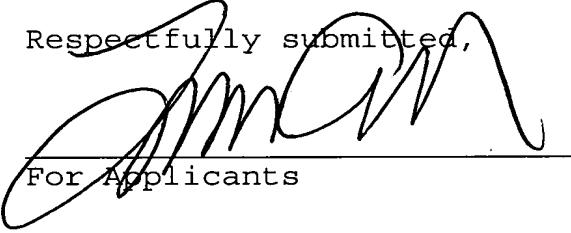
In view of the foregoing, reconsideration and allowance of claims 16 and 19-35 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$55.00 in accordance with Section 1.17 is enclosed herewith.

The fee in the amount of \$78.00 for four claims in excess of twenty and one independent claim in excess of three is enclosed herewith. Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,


For Applicants

LAURENCE A. GREENBERG
REG. NO. 29,308

YHC:cgm

January 31, 2003

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480
Tel: (954) 925-1100
Fax: (954) 925-1101

Applic. No.: 10/076,978

Marked-Up Version of the Amended Claims:

Claim 16 (amended). [A] An intermediate fence construction system, comprising:

a plurality of fence posts including end fence posts;

a ratcheting system including at least two temporary ratcheting posts, at least one of said ratcheting posts having a plurality of [holes formed therein] fastening locations;

a plurality of ratchets secured [in] at least at some of said [holes] fastening locations;

a plurality of high-tension tensile wires running between said temporary ratcheting posts and secured to said plurality of fence posts, at least one end of each of said high-tension tensile wires being connected to a respective one of said ratchets, said high-tension tensile wires being tensioned to a pre-determined tension by actuating said ratchets; [and]

a wire lath secured to said plurality of high-tension tensile wires and said fence posts; and

said high-tension tensile wires being cut between said end fence posts and said ratcheting posts compressing said wire lath.

Claim 19(amended). The intermediate fence construction system according to claim 16, wherein [the] said high-tension tensile wires are galvanized and said wire lath [is 2.8-3.4 gauge, and] is one of galvanized metal and plastic.

Claim 20(amended). The intermediate fence construction system according to claim 16, further comprising a fence coating applied to said wire lath, said high-tension tensile wires compressing said fence coating together with said wire lath.

Claim 21(amended). The intermediate fence construction system according to claim 20, wherein said fence coating includes a scratch coat applied to said wire lath, a brown coat applied to said scratch coat and a finish coat applied to said brown coat.

Claim 22(amended). The intermediate fence construction system according to claim 21, wherein said scratch coat is a Portland cement mixture with polymers, various fiber particles and selected sizes of aggregate.

Claim 23 (amended). The intermediate fence construction system according to claim 21, wherein said brown coat is of the same mixture as said scratch coat.

Claim 24 (amended). The intermediate fence construction system according to claim 21, wherein [both] each of said scratch coat and said brown coat [are] is about 3/8''.

Claim 25 (amended). The intermediate fence construction system according to claim 20, further comprising a paint applied on said fence coating.

Claim 26 (amended). The intermediate fence construction system according to claim 25, wherein said paint is one of a prime coat and a color coat.

Claim 27 (amended). The intermediate fence construction system according to claim 16, further comprising a pre-constructed non-structural decoration column.

Claim 28 (amended). A fence comprising:

a plurality of fence posts;

a plurality of high-tension tensile wires secured to said plurality of fence posts, said high-tension tensile wires

being tensioned to a pre-determined tension and having free ends;

a wire lath secured to said plurality of high-tension tensile wires and said fence posts and being compressed by said high-tension tensile wires [; and

[a fence coating applied to said wire lath].